

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWIN CITY FOODS, INC.
Employer

and

Case 19-RC-265696

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 1439, AFFILIATED WITH THE
UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ Member Emanuel has concerns about the Regional Director's strict application of Sec. 102.66(d) of the Board's Rules and Regulations that precluded the Employer from litigating the appropriateness of the petitioned-for unit merely because the Employer inadvertently served its Statement of Position on the Petitioner 1 hour and 19 minutes after the deadline. Nonetheless, because the Regional Director still directed the hearing officer to take evidence on the appropriateness of the unit and thoroughly considered that evidence, Member Emanuel finds that the record was sufficient for the Regional Director to determine that the unit is appropriate. He therefore joins in denying review.

In denying review of the Regional Director's direction of a mail-ballot election, we note that the direction of a mail-ballot election was consistent with the concerns articulated in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), which sets forth the guidelines and parameters applicable to determining the propriety of a mail-ballot election under the current circumstances of the Covid-19 pandemic. One of those guidelines is where the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher. See *id.*, slip op. at 5. At the time of the Regional Director's decision, the 14-day trend of cases in Franklin County, Washington, where the Employer's facility is located, was increasing, and the 14-day testing positivity rate was over 5%. See https://www.bfhd.wa.gov/programs_services/investigations_outbreaks/covid-19/benton-franklin_case_count. Moreover, the election has been held and setting it aside would result in waste of resources and delay and would be a disservice to the employees who cast their ballots in good faith. Under all of the foregoing circumstances, we find no reason to overturn the Regional Director's determination.

Member McFerran joins her colleagues in denying the Employer's Request for Review, including with respect to the Regional Director's finding that the unit of packaging employees at

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., January 19, 2021.

the Employer's Pasco, Washington facility is an appropriate unit. As to that issue, Member McFerran adheres to her dissent in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), and observes that the unit would also be appropriate under *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011) (*Specialty Healthcare*), enf'd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), which *PCC* overruled.

Member McFerran also agrees to deny review of the Regional Director's mail-ballot determination for the reasons given in her separate opinion in *Aspirus*. She further agrees, however, that setting aside the election at this point would be inefficient and unfair to the unit employees, and that, even under the majority opinion in *Aspirus*, the Regional Director's decision should be affirmed based on the statistics set out above.